IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 751 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JITENBHAI KHANTILAL SHAH - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

==========

Appearance :

MR HARSHIT S TOLIA for Petitioner No(s).: 1.

MR KOGJE, Ld. APP for Respondent No(s).: 1.

==========

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 04/08/2005

ORAL JUDGMENT

1.Rule. Mr.Kogje, learned APP waives of service of Rule on behalf of the respondent State. With the consent of the parties, the matter is taken up for final hearing

today.

2. The short facts of the case are that the vehicle of the petitioner is seized by the police in connection with the C.R. No.I-14/2005 for the offences punishable under Sections 384, 385, 386, 387, 465, 467, 468 and others of IPC. The vehicle is Scorpio Motor Car bearing RTO Registration No.GJ-4-D-5491. The petitioner preferred application under Section 451 read with Section 457 of Cr.P.C. for receiving custody of the vehicle. The said application was rejected by the learned Magistrate on 11.5.2005 and the petitioner carried the matter before the learned Sessions Judge by preferring Revision being Revision Application No.36/2005. The said Revision Application also came to be rejected against which the petitioner has approached this Court.

3. Heard Mr.Tolia, learned Counsel for the petitioner and Mr.Kogje, learned APP for the State.

4. Mr.Tolia, learned Counsel appearing for the petitioner relied upon the decision of the Apex Court in case of ***"Sunderbhai Ambalal Desai v. State of Gujarat", reported in 2002(8) Supreme, 525***, and contended that in view of the observations made by the Apex Court, the vehicle deserves to be released. He also submitted that the petitioner is ready to abide by any condition

which may be imposed by this Court with a view to see that the vehicle is not used for any illegal activity, but the petitioner who is the owner as per the RTO record and when there is no other claim, may be allowed to use the vehicle for lawful purposes.

5. Mr.Kogje, learned APP submitted that as such there are serious disputes about the ownership of the vehicle and as per the prosecution the use of the vehicle for commission of offences cannot be ruled out and, therefore, he submitted that the vehicle may not be released to the petitioner. Mr.Kogje alternatively submitted that even if this Court is inclined to consider the matter for release of the vehicle, strict conditions may be imposed, so that the vehicle may not be used for any illegal activities.

6. It may be recorded that in case of "***Sunderbhai Ambalal Desai v. State of Gujarat",*** the Apex Court for vehicle has made observations at paragraphs 15, 16, 17 and 18 as under:

> "15. Learned senior counsel mr.Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the

guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handling over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

It was further observed at paragraph 21 as under:

"21. However, these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.c. are properly and promptly exercised and articles are not kept for along time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the

> Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

7. If the matter is examined in light of the observations made by the Apex Court, it appears that the petitioner is the owner as per the RTO record and there is no other claim made before the learned Magistrate for custody of the vehicle. At the same time, the learned APP is justified in raising the grievance that the vehicle may be used for other illegal activities and, therefore, with a view to see that the vehicle may not be used for any other illegal activities and if used, immediate action can be taken by the police, I find that if suitable conditions are imposed the same would take case of the situation. In any case, the petitioner in capacity as the owner of the vehicle would be entitled to use the vehicle for lawful purposes. It appears that the vehicle seized is Scorpio Motor Car purchased in January, 2003 and, therefore, the value of the vehicle as on today would be approximately Rs.3,50,000/-. With a view to see that the vehicle is produced by the petitioner as and when desired by the trial Court or the Police, appropriate conditions deserve to be issued for furnishing surety bond by the petitioner of the amount

equivalent to Rs.3,50,000/- and the petitioner would also be required to give undertaking to the trial Court that the vehicle shall only be used for lawful purposes and shall not be used for any un-lawful purposes and shall be produced before the trial Court as and when ordered.

8. In view of the above directions, the impugned order passed by the learned Magistrate and the order passed by the learned Sessions Judge are quashed and set aside, with the further direction as stated hereinafter. The vehicle of the petitioner bearing RTO Registration No.GJ-4-D-5491 shall be released immediately on compliance of the following conditions by the petitioner:

1) The petitioner shall execute a personal bond as well as a bond of surety for the amount of Rs.3,50,000/- to the satisfaction of the trial Court;

2) The petitioner shall give undertaking to the trail Court to the effect that the vehicle shall be produce as and when ordered by the Court or Police and shall be used only for lawful purposes

and shall not be used for any unlawful purposes;

3) The petitioner shall produce the vehicle before the concerned Police Station at the interval of every two months, i.e. on the 1st Sunday between 11 a.m. to 2 p.m., for inspection;

4) The petitioner shall use the vehicle as per the undertaking and if it is found by the Police Officer that the vehicle is used for any unlawful purposes, it would be open to the Police to seize the vehicle immediately and it may also invite further consequences for breach of undertaking.

9. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, no order as to costs. Direct service is permitted.

4.8.2005 **(Jayant Patel, J.)**

vinod